

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 404 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VIJAYSINH B BHATTI

Versus

CCDC CONSTURCTIONS PVT. LTD.

Appearance:

MR PM THAKKAR for Petitioner

DS AFFI. NOT FILED for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 10/07/97

ORAL JUDGEMENT

1. The petitioner is the original Judgment Debtor (defendant) and the respondent is the original Judgment Creditor. The petitioner has filed this revision application challenging the legality and validity of the order, dated 14.11.1991 passed by the 2nd Jt.Civil Judge (SD), Jamnagar rejecting the objections raised by the petitioner at Exhs 13 & 18 in Special Dharakast No.7/86.

2. It appears that the respondent- M/s CCDC Const. Pvt.Co.Ltd. instituted Special Civil Suit No.114/82 before the 2nd Jt.Civil Judge (SD) at Jamnagar to recover the possession of Flat No.11 on the groundfloor in CCD flats interalia contending that the petitioner was the licensee of the premises for a period of four months and on termination of license the petitioner was required to vacate the premises. It appears that the petitioner appeared in the suit on 10.11.1982 and gave an application to engage an advocate. Adjournment was granted but no advocate was engaged by the petitioner nor was any summons or notice served to him. The petitioner came to know that the proceedings of Spl.C.S.No.114/82 proceeded exparte and the trial court passed the decree of eviction on 17.9.82 asking the petitioner to handover the vacant possession of the suit premises. Based on the aforesaid decree the execution proceedings being Special Darkhast No.7/86 came to be filed by the decreeholder and according to petitioner no notice of said darkhast was given to him and warrant for possession was issued. On the same day petitioner filed Exh.11 interalia requesting to recall the order passed below Exh.7 whereby the help of the police was given and he also moved application at Exh.13 on 26th July, 1990 filing his objections to the execution of decree in question. On 4.4.91 petitioner gave another application to permit him to lead evidence with regard to objection filed by him. Aforesaid applications are exhibited at Exhs 11, 13 & 18. It is the case of the petitioner that in fact it was wrongly contended before the executing court that the help of police was required and that the decree was obtained by fraud and with the assistance of police possession of the said premises was wrongly recovered by the bailiff and wrong report was made and therefore he also applied for permission to cross-examine the bailiff.

3. It appears that the Ld.Second Joint Civil Judge (JD), Jamnagar by judgment and order dated 14.11.1991 rejected the application at Exhs 11, 13 & 18 in said Darkhast No.7/86 and directed that the execution proceedings would proceed further. It is the case of the petitioner that in fact the relationship between the parties was not that of landlord and tenant nor licensee or licensor and that therefore the order passed by the executing court rejecting the objections and/or obstructions raised by the petitioner is not sustainable in law in view of the provisions of Order 21 Rules 97 to 103 C.P.Code.

4. Aforesaid orders passed by the executing court

overruling the obstructions/objections of the obstructionist while rejecting the application at Exh.13 is under challenge before this court and such order is passed by the Jt.Civil Judge(JD) at Jamnagar on 14.11.1991.

5. The Ld.single judge of this court while issuing rule nisi on this CRA was pleased to stay further proceedings of the said Darkhast No.7/86 pending before the 2nd Jt.Civil Judge (SD), Jamnagar and said ad-interim relief was granted against the order of 14.11.1991.

6. Since service of summons was taken for being served to the respondent and affidavit of service is not filed and since the stay is obtained as back as 20.3.93 this court is not inclined to wait any more so as to provide any further opportunity to the petitioner despite summons after the expiry of period of almost five years. In my opinion, the order passed by the 2nd Jt.Civil Judge(SD) Jamnagar dated 14.11.1991 rejecting objections raised by the J.Dr.at Exh.13 and for recalling the order of possession vide Exh.11 and the order passed below Exh.18 rejecting the application for permitting the J.Dr.to raise objections though are not sustainable in law in view of the decision rendered by this court in the case of GANGABEN BHAGAT vs SOMABHAI MAGANBHAI reported in 1996(3)GLR 76 dealing with provisions of Order 21 Rules 97-103 is read in its entirety it is clear that no obstruction can be thrown as such. It is not known to this court at this stage as to whether the possession of the premises is already handed over to the J.Cr. or not. No submission whatsoever is made in the memo of CRA to the effect that despite order of execution and issuance of jangam warrant, jangam warrant is not executed and that possession is not handed over to the J.Dr. In view of such vague state of affairs where no necessary pleadings are made for the purpose of obtaining exparte relief from this court, in my opinion, it would be just and proper to order as under:

"Rule is discharged. Ad-interim relief granted on 20.3.92 stands vacated. However, if the possession of the premises in question is not handed over to the judgment debtor, the possession of the petitioner shall be protected and the procedure prescribed by Rules 97-103 CPC is directed to be followed by the executing court so as to permit the obstructionist to lead his evidence in support of his obstruction/objection and

to decide such obstructions/objections as if they are contentions raised in Civil Suit by permitting him to lead proper evidence. However, if the possession is already handed over to the J.Dr. no effective relief could be granted in this CRA. Rules shall stand discharged and interim relief shall stand vacated automatically. No costs".

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